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PAIGE TRAUTWEIN, CLERK

SEP 06 2013

Attorneys for Plaintiff

DEPUTY


MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,
RAVALLI COUNTY

STATE OF MONTANA,)	Cause No.: DC-11-117
)	
Plaintiff,)	STATE'S PROPOSED JURY
)	INSTRUCTIONS
vs.)	
)	
HARRIS HIMES,)	
)	
Defendant.)	

The State of Montana, by and through undersigned counsel, submits the State's Proposed Jury Instructions, which supplement the previously stipulated instructions. The proposed instructions include a Contingent Instruction, State's Proposed Instruction No. 16, which is being offered only in the event the Court wishes to instruct the jury about an exemption in the Securities Act, as requested by the Defendant. Because this is a question of law, the State believes it's inappropriate to instruct the jury on the exemption. Mont. Code Ann. § 46-16-103(2).

DATED this 6th day of September, 2013.

By:


JESSE LASLOVICH
BRETT O'NEIL

Special Deputy Ravalli County Attorneys

CERTIFICATE OF SERVICE

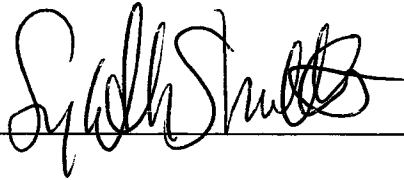
This is to certify that a true and accurate copy of the foregoing document was hand delivered, picked up by courier, email, or sent by U.S. Mail, postage paid, this 12 day of September, 2013, to the following:

Hon. Loren Tucker
5th Judicial District Court
2 S. Pacific #6
Dillon, MT 59725

Harris Himes
PO Box 540
Hamilton, MT 59840

By email to the following:

dkaatz@mt.gov
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A handwritten signature in black ink, appearing to read "Sybil Shultz", is written over a horizontal line.

STIPULATED PROPOSED INSTRUCTIONS INDEX

1. Juror Misconduct
2. [Preliminary Instruction MCJI 1-102 (2009)]
3. [Preliminary Instruction MCJI 1-103 (2009)]
4. [Preliminary Instruction MCJI 1-104(2009)]
5. Count I: Theft by Deception
6. [Elements of Theft: Count I]
7. Deception
8. Knowingly
9. Purposely
10. [Withdrawn]
11. Count V: Conspiracy to Commit Theft by Deception
12. Conspiracy to Commit Theft by Deception
13. Conspiracy – Responsibility for Acts of Co-Conspirators
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STATE'S PROPOSED INSTRUCTIONS INDEX

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3. Willfully
4. Count III: Failure to Register a Security
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7. Fraudulent and Other Prohibited Practices
8. Material Fact Defined
9. Count V: Conspiracy to Commit Theft

10. Conspiracy to Commit Theft
11. Count VI: Conspiracy to Commit Fraudulent and Other Prohibited Practices
12. Conspiracy to Commit Fraudulent and Other Prohibited Practices
13. Security Defined
14. Person Defined
15. Pro Se Litigant
16. Exempt Transactions

INSTRUCTION NO. _____

Securities Act Purpose

A primary goal of the Securities Act of Montana is to protect the investor, persons engaged in securities transactions, and the public interest.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-102(1) (2007).

State's Proposed Instruction No. 1

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

INSTRUCTION NO. _____

Count II: Failure to Register as a Salesperson

It is unlawful for a person to willfully transact securities business in this State as a salesperson unless the person is registered with the State.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. §§ 30-10-201(1), 306

State's Proposed Instruction No. 2

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. _____

Willfully

A person acts “willfully” if the person is aware of what the person is doing. It does not mean that the person intended to violate the law, injure another, or acquire any advantage.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-306(1); Comment 2;

Section 409 of the 1956 Uniform Securities Act, Revised to Section 508

State’s Proposed Instruction No. 3

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

INSTRUCTION NO. ____

Count III: Failure to Register a Security

It is unlawful for a person to willfully offer or sell a security unless the security is registered with the State.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. §§ 30-10-202(1), 306

State's Proposed Instruction No. 4

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

INSTRUCTION NO. _____

Disclosure Requirements

It is unlawful for a person to fail to furnish to a customer purchasing securities in an offering, no later than the date of the confirmation of the transaction, either a final prospectus or a preliminary prospectus and any additional documents, which together include all information set forth in the final prospectus.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. §§ 30-10-201, 30-10-301;

Admin. R. Mont. 6.10.401(1)(j)

State's Proposed Instruction No. 5

Given as Instruction No. _____ Refused _____ Withdrawn __ By _____

INSTRUCTION NO. _____

Count IV: Fraudulent and Other Prohibited Practices

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to willfully make any untrue statement of a material fact or willfully omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. §§ 30-10-301(1)(b), 306

State's Proposed Instruction No. 6

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

INSTRUCTION NO. ____

Fraudulent and Other Prohibited Practices

To convict the Defendant of the charge of fraudulent and other prohibited practices as alleged in Count IV, the State must prove the following elements:

1. The Defendant offered and/or sold a security;

AND

2. The offer and/or sale took place in, into, or from the State of Montana;

AND

3. In connection with the offer or sale, the Defendant willfully omitted material facts when he failed to provide Geoffrey Serata with complete disclosure information or a prospectus about the security;

AND

4. In light of the circumstances, the disclosure information or prospectus about the security was a material fact necessary to make the Defendant's statements not misleading.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt, then you should find the Defendant not guilty.

GIVEN:

DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-301(1)(b)

State's Proposed Instruction No. 7

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

INSTRUCTION NO. ____

Material Fact Defined

An omitted fact is material if there is substantial likelihood that a reasonable investor would consider it important in deciding whether to invest.

GIVEN: _____
DISTRICT JUDGE

SOURCE: *TSC Industries v. Northway*, 426 U.S. 438 (1976)

State's Proposed Instruction No. 8

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

INSTRUCTION NO. ____

Count V: Conspiracy to Commit Theft

A person commits the offense of conspiracy when, with the purpose that the offense of theft be committed, the person agrees with another to the commission of the offense of theft, and an act in furtherance of the agreement is performed by any party to the agreement.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 45-4-102 (2007); *State v. Williams*, 185 Mont. 140, 604
P.2d 1224 (1979)

State's Proposed Instruction No. 9

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

INSTRUCTION NO. ____

Conspiracy to Commit Theft

To convict the Defendant of conspiracy, the State must prove the following elements:

1. That the Defendant agreed with James “Jeb” Bryant to the commission of the offense of theft;

AND

2. That the Defendant did so with the purpose that the offense of theft be committed;

AND

3. That an act in furtherance of the agreement was performed by any party to the agreement.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If you find the Defendant guilty of Conspiracy to Commit Theft, he cannot be found guilty of Theft.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. §§ 45-4-102; 46-11-410

State’s Proposed Instruction No. 10

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

INSTRUCTION NO. ____

Count VI: Conspiracy to Commit Fraudulent and Other Prohibited Practices

A person commits the offense of conspiracy when, with the purpose that the offense of fraudulent and other prohibited practices be committed, the person agrees with another to the commission of the offense of fraudulent and other prohibited practices, and an act in furtherance of the agreement is performed by any party to the agreement.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 45-4-102 (2007); *State v. Williams*, 185 Mont. 140, 604 P.2d 1224 (1979)

State's Proposed Instruction No. 11

Given as Instruction No. _____ Refused ___ Withdrawn ___ By ___

INSTRUCTION NO. ____

Conspiracy to Commit Fraudulent and Other Prohibited Practices

To convict the Defendant of conspiracy, the State must prove the following elements:

1. That the Defendant agreed with James “Jeb” Bryant to the commission of the offense of fraudulent and other prohibited practices;

AND

2. That the Defendant did so with the purpose that the offense of fraudulent and other prohibited practices be committed;

AND

3. That an act in furtherance of the agreement was performed by any party to the agreement.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If you find the Defendant guilty of Conspiracy to Commit Fraudulent and Other Prohibited Practices, he cannot be found guilty of Fraudulent and Other Prohibited Practices.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt, then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. §§ 45-4-102; 46-11-410

State’s Proposed Instruction No. 12

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

INSTRUCTION NO. ____

Security Defined

A “security” is any note; stock treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; viatical settlement purchase agreement; certificate of interest or participation in an oil, gas, or mining title or lease in payments out of production under a title of lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-103(22)(a)

State’s Proposed Instruction No. 13

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

INSTRUCTION NO. ____

Person Defined

“Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-103(16)

State’s Proposed Instruction No. 14

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

INSTRUCTION NO.

Pro Se Litigant

Mr. Himes has decided to represent himself in this trial and not to use the services of a lawyer. He has a constitutional right to do that. His decision has no bearing on whether he is guilty or not guilty, and it must not affect your consideration of the case.

Because Mr. Himes has decided to act as his own lawyer, you will hear him speak at various times during the trial. He may make an opening statement and closing argument. He may ask questions of witnesses, make objections, and argue to the court. I want to remind you that when Mr. Himes speaks in these parts of the trial he is acting as a lawyer in the case, and his words are not evidence. The only evidence in this case comes from witnesses who testify under oath on the witness stand and from exhibits that are admitted.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Third Circuit Criminal Jury Instruction § 1.18

State's Proposed Instruction No. 15

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____

CONTINGENT INSTRUCTION NO. ____

Exempt Transactions

For Counts II and III only, a security transaction may be exempt if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

AND

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer.

The Defendant has the burden of proving an exemption. Any exemption must be narrowly construed to generally ensure investor protection.

GIVEN: _____
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 10-10-105(8)(a) (2007); Mont. Code Ann. § 30-10-106; *SEC v. Platforms Wireless Int'l Corp.*, 2010 U.S. App. Lexis 15328, 16 (9th Cir. Cal. Jul. 27, 2010).

State's Proposed Instruction No. 16

Given as Instruction No. ____ Refused ____ Withdrawn __ By ____